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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HCL PARTNERS LIMITED PARTNERSHIP, On behalf of Itself and all others similarly situated, Plaintiff, -v- LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, DEAN M. LUVISA, AMIN I. KHALIFA and PRICEWATERHOUSECOOPERS, LLP, Defendants.	Case No.: 07-cv-2245-BTM-NLS **CLASS ACTION** **REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION** DATE: August 15, 2008 TIME: 11:00 a.m. JUDGE: Hon. Barry Ted Moskowitz CTRM: 15 (5^{th} Floor)
FRANK CHAREK, Individually and on behalf of all others similarly situated, Plaintiff, -v- LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, MARK H. RACHESKY, AMIN I. KHALIFA, GLENN UMETSU, and DEAN M. LUVISA, Defendants.	Case No.: 07-cv-2256-BTM-NLS

[Caption continued on next page]

DEVAY CAMPBELL, Individually and on behalf of all others similarly situated, Plaintiff, -v- LEAP WIRELESS INTERNATIONAL, INC., S. DOUGLAS HUTCHESON, MARK H. RACHESKY, AMIN I. KHALIFA, GLENN UMETSU, and DEAN M. LUVISA, Defendants.	Case No.: 07-cv-2297-BTM-NLS

Class Members Westchester Capital Management, Inc. and Green & Smith Investment Management L.L.C. (together "Westchester Capital") submit this reply memorandum in support of their motion for reconsideration of the Court's May 22, 2008 Order Granting Motions To Consolidate, Appointing New Jersey Carpenters Pension and Benefit Fund As Lead Plaintiff, And Approving Lead Counsel Selection (the "Lead Plaintiff Order").

As discussed in detail in its opening brief, Westchester Capital believes that the Court erred in rejecting its application to be appointed as lead plaintiff when Westchester Capital clearly had greater losses than those of the competing movants and there was no evidence presented sufficient to contradict the sworn statement of the Chief Compliance Officer of Westchester Capital that Westchester Capital had the authority to seek to be appointed lead counsel.

In an effort to address any doubt as the authority of Westchester Capital, documents have been prepared by the requisite persons and entities confirming that Westchester Capital did and does have the authority to seek appointment as lead plaintiff in this and other cases alleging violations of the securities laws in order to recover losses suffered by the underlying funds. The documents, signed by the appropriate trustees and officers of the funds, attest to the longstanding authority of Westchester Capital to take the actions it has taken and will continue to take to pursue these types of claims. While the New Jersey Funds call these documents "manufactured" and describes them as "purported resolutions," the New Jersey Funds provide no substantive basis to doubt the validity of each of the documents that has been submitted. These documents, submitted with Westchester Capital's motion, merely confirm what Mr. Behren testified to previously – namely that Westchester Capital has "unrestricted decision-making authority with respect to the funds they advise and manage"; that he was authorized to take all actions on behalf of the funds "including the right to commence legal actions . . . and the right to seek to serve as lead plaintiff in an action brought pursuant to the federal securities law"; and that Westchester Capital was attorney-in-fact "to take all actions" on behalf of the funds. These types of documents were not submitted previously because there was no evidence submitted by the New Jersey Funds in their opposition briefs sufficient to cast doubt upon Mr. Behren's assertions or otherwise to rebut the presumption that Westchester Capital was the most adequate plaintiff.

The New Jersey Funds try to distinguish this case from the supplemental authority submitted by Westchester Capital wherein Judge Pauley, on an identical record, appointed Westchester Capital as the lead plaintiff in cases pending against the SLM Corporation ("Sallie Mae") in the Southern District of New York. The New Jersey Funds assert that the plaintiffs in Salle Mae submitted additional evidence in that case before the lead plaintiff motion was decided. However, the lead plaintiff motion had already been fully briefed and argued at the time the additional submission was made. The additional evidence in Sallie Mae (the same letters and consents submitted here) was first provided to Judge Pauley because the competing movants in Sallie Mae submitted this Court's Lead Plaintiff Order in an effort to defeat Westchester Capital's lead plaintiff motion in Sallie Mae. Given that this Court had questioned the authority of Westchester Capital, plaintiffs in Sallie Mae simply alerted the New York District Court to the fact that Westchester Capital had moved for reconsideration here and provided a courtesy copy of the motion for reconsideration which annexed each of the corporate documents confirming Westchester Capital's authority.

While the New Jersey Funds suggest, without any basis whatsoever, that the information that has been submitted to the Court is somehow manufactured and insufficient, Westchester Capital has been forthright with the Court and will continue to pursue its right to recover losses suffered by the funds that it manages, which in this case dwarf the losses of the New Jersey Funds. Westchester Capital is committed to making every effort to redress securities laws violations that have resulted in losses to its clients and has filed this motion for reconsideration in a final attempt to direct litigation in which it has the largest financial interest by far. Westchester Capital continues to believe that the Court overlooked aspects of the sworn statements of Mr. Behren and determined in error that these statements, made under penalty of perjury, were insufficient to establish authority in the absence of any evidence to the contrary.

CONCLUSION

For the foregoing reasons and the reasons set forth in its opening brief, Westchester Capital respectfully requests that the Court reconsider that portion of the Lead Plaintiff Order that appointed the New Jersey Funds as the Lead Plaintiff and approved their selection of counsel.

DATED: August 8, 2008

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